IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.328 OF 2005

Mr.Kandaswami Munnuswami Devendra .... Appellant

V/s.

The State of Maharashtra .... Respondent

Mr. M.K. Kocharekar for the the appellant.
Ms. Rajeshree M. Gadhvi APP the State.

ALONGWITH

CRIMINAL APPEAL NO.567 OF 2005

Mr.Shamsuddin Bashir Ahmed Shekh ...Appellant

V/s.

State of Maharashtra ....Respondent

Mr. M.K. Kocharekar for the the appellant.
Ms. Rajheshree M. Gadhvi APP the State.

CORAM : V.M. KANADE, J.

DATED : 24th April, 2006.

ORAL JUDGMENT:-

1. Both these appeals can be disposed of by a common judgment since the appellants in both these appeals are challenging the judgment and order passed by the Sessions Court in Sessions Case No.154/02.

2. The appellant in Criminal Appeal No.328/05 is original accused No.3 who is in jail since 10/01/2002 and the appellant in Criminal Appeal No.567/05 is original accused No.2 and he is in jail since 15/11/2001. Both these appellants shall be referred to as original accused No.2 and original accused No.3.

3. Prosecution case in brief is that on 15/11/2001 at about 1.30 p.m. appellants/original accused No.2 and 3 alongwith other accused committed robbery at Hashiware Branch of Raigad District Central Co.op. Bank Ltd.

4. It is alleged that the original accused No.2 and 3 had used deadly weapons and robbed the cash and jewellery. They were arrested immediately and other two accused were arrested during the course of the investigation. Only point which is urged by the Counsel appearing on behalf of the appellants is that original accused No.2 is in jail since 15/11/2001 and has already completed four years and six months and also paid fine and if the remissions which are available to the accused are taken into consideration, he has completed more than five years in jail and

therefore, on that count he may be directed to be released and his sentence will be reduced from five years to four years and six months.

5. It was contended by the Counsel appearing for original accused No.3 that the appellant was in jail since 10/1/2002 and he had completed four years and four months of the sentence and his sentence may be reduced from five years to four years and four months. Ld. Counsel further submitted that if the number of remissions which are available to the accused are taken into consideration, he had already completed in all five years in jail and therefore, otherwise also he will be entitled to be released as he had completed his sentence. He further submitted that both the appellants have paid amount of fine imposed by the Sessions Court and therefore, question of undergoing the sentence in default did not arise.

6. In my view, taking into consideration the facts and circumstances of the case, submissions made by the learned Counsel for the appellants are accepted. Apprehension of the appellants is that if the appeal is kept pending, appellants may be detained in prison

beyond period of sentence in view of the pendancy of the present appeal. I have perused the judgment and order of the Sessions Court and also gone through the evidence adduced by the prosecution. The prosecution has examined only 17 witnesses. So far as original accused No.2 is concerned, one of the witnesses speaks about his participation in the alleged crime. Only bag containing gold ornaments has been recovered from him and he was immediately arrested after the incident. So far as original accused No.3 is concerned, role which is assigned by the witnesses to him is that he entered the bank alongwith other accused with a bottle in his hand. No recovery of the weapon has been made at his instance. Similarly no incriminating article has been recovered at his instance. Sessions Court has convicted him on the basis of statements of two eye witnesses who had identified him. Taking into consideration these facts, in my view, there is no reason to interfere with the findings of conviction which are recorded by the Sessions Court. Conviction of the appellants, therefore, is confirmed. However, the sentence of original accused No.3 i.e. Appellant in Criminal Appeal No.328/2005 is reduced from five

years to fours years and four months. Similarly sentence of original accused No.2 i.e. Appellant in Criminal Appeal No.567/2005 is reduced from five years to four years and six months. Criminal appeals accordingly are partly allowed. In the result following order is passed.

O R D E R :

. Both the appeals are partly allowed. The conviction is confirmed. The sentence however is reduced to the period which the appellants have already undergone.

. The appellant in Criminal Appeal No.328 of 2005 has undergone 4 years and 4 months of the sentence. The sentence is reduced to 4 years and 4 months. If the appellant has already undergone the sentence, he shall be released forthwith, unless required in any other case.

. The appellant in Criminal Appeal No.567 of 2005 is convicted and sentenced to suffer R.I. for 4 years and 6 months. The appellant is in jail since

15/11/2001. The appellant has already undergone the sentence. The appellant be released forthwith, unless required in any other case.

. Both the appeals are accordingly disposed of in the above terms.

V.M. KANADE J.